

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

ROGER KRUEGER, et al.,

Plaintiffs,

v.

No. 11-CV-02781 (SRN/JSM)

AMERIPRISE FINANCIAL, INC., et al.,

Defendants.

**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON STATUTE OF
LIMITATIONS GROUNDS**

Defendants Ameriprise Financial, Inc., Ameriprise Financial, Inc. Employee Benefits Administration Committee, Michelle Rudlong, Ameriprise Financial, Inc. 401(k) Investment Committee, Compensation and Benefits Committee of the Board of Directors of Ameriprise Financial, Inc., Ira D. Hall, Warren D. Knowlton, W. Walker Lewis, Siri S. Marshall, Jeffrey Noddle, Richard F. Powers III, Robert F. Sharpe, Jr., Jeffrey P. Fox, Phil Wentzel, Jeffrey A. Williams, Martin S. Solhaug, Kristi L. Peterson, Timothy V. Bechtold, and Brent Sabin (collectively, “defendants”), pursuant to Fed. R. Civ. P. 56(a), move this court for an Order dismissing plaintiffs’ claims for relief on the grounds that they are untimely.

ERISA’s three-year statute of limitations provides that plaintiffs’ claims are time-barred if plaintiffs had knowledge of the facts underlying their claims more than three years before filing their lawsuit. *See* 29 U.S.C. § 1113(2). Plaintiffs filed their complaint on September 28, 2011 but have had actual knowledge of all of the aspects of the

Ameriprise 401(k) Plan (the “Plan”) that they challenge since at least September 28, 2008.

Plaintiffs allege both prohibited transactions and breach of fiduciary duty claims in violation of ERISA Section 406 and Section 404, respectively, in connection with defendants’ inclusion of RiverSource Funds in the Plan investment lineup. Plaintiffs’ prohibited transaction claims are barred because plaintiffs knew before September 28, 2008 that the RiverSource Funds offered by the Plan were managed by a wholly-owned subsidiary of Ameriprise and charged fees for fund management. Plaintiffs have admitted to having such knowledge and numerous Plan communications disclosed these facts to plaintiffs. Plaintiffs’ breach of fiduciary duty claim based upon the allegedly imprudent inclusion of the RiverSource Funds in the Plan investment lineup is also untimely because plaintiffs were admittedly aware, prior to September 28, 2008, of the Funds’ performances histories and fees through Plan disclosures including prospectuses.

Plaintiffs’ prohibited transaction and breach of fiduciary duty allegations regarding the Plan’s payment of purportedly excessive recordkeeping fees to affiliate Ameriprise Trust Company and Wachovia are also untimely because the facts underlying these transactions were fully disclosed to plaintiffs through Plan disclosures. Moreover, the fraudulent concealment doctrine does not save plaintiffs’ claims because affirmative disclosures by defendants refute any suggestion that defendants engaged in a course of conduct designed to conceal any alleged breach.

This motion is based upon all the files and records herein, including the parties' memorandum of law, the declaration of Shannon Barrett and all exhibits attached thereto, the arguments of counsel, and all the files, records, and proceedings herein.¹

Dated: July 3, 2013

s/ Benjamin G. Bradshaw

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¹ For the reasons set forth more fully in the Memorandum of Law in Support of Defendants' Motion for Summary Judgment on Statute of Limitations Grounds filed concurrently herewith, defendants so move with respect to all claims except those by plaintiffs Roger Krueger and Margene Bauhs based on their investments in the Columbia Contrarian Core Fund.